IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.988 OF 2004

Nazir Khan Yakub Khan Petitioners

versus

The State of Maharashtra and others Respondents

Mr.Diwan for petitioners.

Mr.Y.S.Jahagirdar, Sr.Counsel for respondent no.2

Ms.Purandare for respondent no.4.

Mr.V.a.Thorat, Advocate General for respondent no.6

Mr.C.U.Singh for respondent no.7.

AGP for respondent nos.1 and 3.

CORAM : H.L.GOKHALE AND
S.C.DHARMADHIKARI, JJ.

DATE : 11th March 2005

ORAL JUDGEMENT (BY S.C.DHARMADHIKARI, J.) :-

1. We have heard Mr.Diwan for petitioners, Mr.Y.S.Jahagirdar - learned Senior Counsel for respondent no.2, AGP for respondents 1 and 3 and Ms.Purandare for respondent no.4. Mr.V.A.Thorat, learned Advocate General appears for respondent no.6 and Mr.C.U.Singh appears for respondent

no.7.

2. By this petition under Article 226 of Constitution of India, the petitioners apply for quashing and setting aside of proceedings leading to implementation of a Slum Rehabilitation Scheme. They also apply for quashing and setting aside of the directions and orders issued by respondent no.3 while deciding the eligibility of slum dwellers. A declaration is claimed by the petitioners to this effect that respondent no.6 is not duly authorised representative of slum dwellers and had no authority or power to permit 7th respondent to carry out any development.

3. The plot of land admeasures about 28,200.60 square meters. It is situate at Vile Parle in Mumbai Suburban District and bears CTS Nos.439 to 442, 443, 444 (Pt), 447 and 448, 451, 452, 453 and 454 A. It is covered by slums. A rehabilitation scheme for the slum dwellers under the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (herinafter referred to as "the Slum Act") was initially submitted for the entire plot. The slum colony is known as "Prem Nagar". This plot is affected by reservation for Nursing Training

College and Housing, Play Ground, Municipal Primary School and Secondary School. It is also affected by 13.4 mtrs. D.P.Road and 9.5 mtrs. D.P.Road. Since there is stay on Non Buildable (Reservation) Plots such as Recreation Ground, Play Ground etc. it was proposed that a scheme for rehabilitation would be framed and implemented excluding such reservation. Accordingly, Secretary, Slum Rehabilitation authority has issued Supplemental Annexure-II on 15th April 2004. As a result of this supplemental annexure, portion of the play ground reservation earlier included in the scheme is now deleted. The slum dwellers on remaining plot are considered for eligibility. A revised slum plan showing boundaries excluding play ground reservation is accordingly prepared. This plot is owned by Municipal Corporation of Greater Bombay. As per Supplemental Annexure-II, there are 943 structures on the plot. 442 structures are cencused/protected and thus eligible. Out of these 442 structures, four are commercial. The details of development are as under :-

Sr.	Description	Area in Sq.Mtrs
1.	Area of slum plot	17435.5

2.	Plot of area for FSI	15599.70
3.	FSI permissible on plot	2.5
4.	BUA permissible on plot	38999.25
5.	Rehabilitation component	21755.81
6.	Rehabilitation FSI	14748.84
7.	Sale component (same as ’4’)	21755.81
8.	Total BUA sanctioned for project (4+5)	36504.65
9.	total FSI permitted for peoject	2340
10.	BUA proposed for sale on plot	21755.81
11.	Total BUA proposed to be consumed on plot for maximum 2.50 FSI	36504.65
12.	TDR if any (7-9)	Nil
13.	No of slum dwellers to be reaccommodated	442
14.	No.of PAP tenements generated in scheme	156
15.	Area of unbuildable reserva-tion/road to be surrendered	
	a. Road (D.P.)	3679.70
16.	BUA of reservation to be surrendered free of cost	
	a. for Municipal Primary School/Secondary School	768.00
	b. Nurses training college and housing	2620.00

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4. It is contended in the petition that there are about 1,400 structures on the subject plot.

It is alleged that about 1,000 structures (residential and commercial) are eligible. It is contended that the test of eligibility is their existence prior to 1st January 1995. This requirement is met in the case of 1,000 structures which are occupied by persons of lower income strata.

5. It is contended that committee members of respondent no.6 in collusion with respondent no.7, have defrauded residents of proposed society. They are claiming support of 70% of the residents for implementation of rehabilitation scheme. After setting out the benefits of the rehabilitation scheme, it is contended that office bearers of respondent no.6 are not elected by the General Body. No general body meetings have been held of the proposed society nor a election held of the Managing Committee. Yet, respondents 6 and 7 in collusion with each other have submitted a scheme for redevelopment of the plot to respondent no.2. This is on the basis that the said scheme enjoys support of requisite 70% of the occupiers. In this view of the matter, petitioners seriously apprehend that they would not be conferred any benefit in the rehabilitation scheme and their rights would be

defeated and frustrated. They submit that their interests are not sufficiently protected in the proposed scheme. They seek not only representation on the committee of the proposed society but also change in the developer who would be implementing the redevelopment scheme.

6. Mr.Diwan, learned counsel for the petitioner has reiterated the aforesaid contentions and additionally invited our attention to the fact that the support of 70% as claimed, is not at all there. The slum declaration is dated 24th May 2001 and the exercise of obtaining signatures and consent of requisite number of occupiers, undertaken at that time, has no relevance. He invites our attention to the provisions of Slum Act and the Development Control Regulations and contends that a fraud has been prepetrated on the Authorities. He has invited our attention to the affidavit filed by respondent no.6 to support his aforesaid pleas. He has also taken us through the affidavit of the developer (respondent no.7) dated 21st June 2004 and more particularly para 3 thereof. He has also contended that all the petitioners are eligible. In any event, Annexure-II shows names of atleast three petitioners. Therefore, any scheme, according to

him, cannot exclude eligible petitioners. He submits that others are also eligible.

7. Mr.Diwan emphasised the fact that the Slum Rehabilitation Authority (hereinafter referred to as "SRA" for the sake of brevity) has been constituted for the purposes of undertaking schemes of redevelopment of slums and providing accommodation to eligible hutment and pavement dwellers. Further, the authority is responsible to house slum dwellers in censused structures. The authority is discharging a statutory function. All powers conferred on the SRA under the Slum Act are coupled with a duty and obligation towards slum dwellers. Therefore, if it has exercised its jurisdiction in violation and in breach of the provisions or while exercising its powers it has acted irrationally, arbitrarily or unreasonably, then it’s actions are liable to be interfered with by this Court in exercise of its writ jurisdiction. Mr.Diwan has invited our attention to the guidelines and annexures as well as circulars issued by the SRA for enabling it to discharge its duties. According to Mr.Diwan, circulars bearing nos.2 and 2A dated 4th April 1997 and 13th November 1997 mandate that the SRA should scrutinise

cautiously and carefully the credentials of a developer and only if it is satisfied that the developer has the technical qualifications and is solvent as well as capable, that it should permit him to carry out the obligations which are in fact to be carried out by the SRA itself.

8. Mr.Diwan has emphasised the importance of the aforesaid circulars and the criteria evolved thereunder specifically with regard to financial capacity of a develdoper. He submits that the obligation to forward the Auditors Certificate and Bankers Certificate cannot be waived. The requirement under these circulars is mandatory. They have to be strictly complied with. There is no question of any substantial compliance. He submits that if substantial compliance is to be permitted in such matters then the very purpose and object of setting up SRA would be defeated. Mr.Diwan submits that if the capacity and competence of respondent no.7 is tested in the light of the circulars, then it has neither the technical competence nor the financial capability necessary to undertake such a huge project. He has pointed out that respondent no.7 is a shell company. It has share capital of only Rs.4,000/-. It has no bank balance. It’s

accounts are also not filed. He submits that in such state of affairs it could be safely termed as "defunct" company. Respondent no.7 does not have a single project to its credit. He submits that there are no technically qualified persons manning and controlling respondent no.7 inasmuch as it does not have a Project Engineer as it’s staff member. In this view of the matter, the decision to permit 7th respondent to carry out the development would have disastrous consequences. The decision is totally perverse and should be set aside.

9. On the other hand, learned counsel appearing for SRA and the learned Advocate General as well as Mr.Singh made an attempt to justify the decision of SRA.. Mr.Jahagirdar appearing for SRA submitted that it will not be open for Mr.Diwan to complain about the financial and technical capacity of 7th respondent any longer. In his submission, on an earlier occasion, when this apprehension was expressed by Mr.Diwan, this Court directed the SRA to examine and scrutinise the materials placed by respondent no.7 in support of its capability to undertake this project. That exercise has been carried out by none other than the Chief Executive Officer of

SRA.. The said person is a high powered official appointed by the State Government. He has given sufficient opportunity to the parties including petitioners to place all materials. Thereafter, in pursuance of the directions of this Court, he has submitted a comprehensive report. That report falsifies all contentions raised and ultimately justifies selection of 7th respondent. In this view of the matter, according to Mr.Jahagirdar, there is absolutely no substance in the pleas raised by Mr.Diwan. Mr.Jahagirdar has been supported by learned Advocate General and in addition he contends that 6th respondent has taken all necessary precautions and after considerable efforts ultimately approached the SRA.. All occupants are waiting anxiously and eagerly for allotment of tenements admeasuring 225 sq. ft. by way of permanent alternate accommodation. The very dream of the hutment dwellers and slum dwellers of having a permanent roof over their head will not materialise and fulfilled, if the project is delayed further.

10. Mr.Singh, learned counsel appearing for 7th respondent has invited our attention to the affidavits filed on record. He submits that the petitioners are not at all entitled to raise the

pleas referred to above. He submits that there is absolutely no basis for the apprehensions expressed by Mr.Diwan. He submits that respondent no.7 has entered into a joint venture arrangement with M/s.Spark Developers and services of Mr.D.C.Desai and Mr.Ajay Desai are requisitioned. Mr.D.C.Desai had been working in the Slum Department of Bombay Municipal Corporation for 14 years. He is aware of all rules and regulations as well as schemes. He has handled number of development schemes as well as redevelopment proposals. Mr.Ajay Desai has ten years expertise in the construction field. He is expert in structural engineering. He has handled projects worth Rs.70.00 crores. He is at present executing four projects worth Rs.25.00 crores. He has permanent staff as well as premises. As far as financial position is concerned, it was pointed out by Mr.Singh that there is liquidity of Rs.3.5 crores in bank account and fixed deposits. This aspect is supported by letter of Corporation Bank. Similarly, Director of respondent no.7 has been all through out associated with the project in hand. Mr.Vinod Sigtia is assisting the society in undertaking the development of slums. He has pursued the matter at several levels. Therefore, it is not

as if he is not capable at all.

11. With the assistance of learned counsel appearing for parties, we have perused the petition and the annexures and the affidavits filed in reply and rejoinder. We have also perused the report of the Chief Executive Officer of SRA submitted pursuant to the directions of this Court. We have also perused the relevant documents including bank statements, certificates etc.. In our view, it will not be possible for us to entertain the objections at this stage. The facts as alleged by the petitioners are seriously disputed. It is not permissible for us to sit in judgement over the decision of SRA..

12. The SRA having been set up by the State in exercise of its power under the Slum Act, it is ultimately for it to decide as to who should be permitted to undertake the redevelopment of slum. In this behalf, perusal of the relevant statutory provisions including Section 13 would make it abundantly clear that the SRA is empowered to permit land holders of occupants of an area which is declared as slum rehabilitation area to undertake scheme of redevelopment of such land and if they do not come forward with a scheme for

redevelopment within a reasonable time, the SRA may decide to redevelop such land by entrusting it to any other Agency. In the instant case, respondent no.7 has been selected by respondent no.6. The SRA is satisfied that the requisite 70% numbers/occupiers of slum area have come forward and reposed confidence in respondent no.7. Since petitioners raised objections to the capacity and capability of respondent no.7, this Court issued directions that these aspects be scrutinised and verified once again. Even that exercise is now complete and a report is submitted by the CEO of SRA.. In such circumstances, we are of the view that all aspects have been considered by the SRA and it’s decision cannot be faulted. More so, when the proposal is at a primary stage.

13. Despite above conclusion, we called upon Mr.Jahagirdar to suggest additional safeguards in the scheme. This course was adopted by us with a view to protect the interests of the eligible slum dwellers. Since Mr.Diwan complained that their interests are not sufficiently protected, we called upon Mr.Jahagirdar to make suitable modifications. We also suggested that SRA should insist upon a substantial sum being deposited

with it by respondent no.7 and also prohibit respondent no.7 from undertaking development and construction of flats for sale in open market, unless it completes construction of buildings/tenements for rehabilitation of all eligible slum dwellers.

14. This suggestion was made by us because it was brought to our notice by Mr.Jahagirdar that if the scheme is approved and Letter of Intent (for short "LOI") is issued on the basis of rules and regulations of SRA, then 616 tenements will have to be constructed for eligible slum dwellers. The cost structure in that event would be approximately Rs.5.00 crores for construction of 308 rehabilitation tenements. The Assistant Engineer of respondent no.2 has filed an affidavit stating that for ensuring effective and timely rehabilitation of slum dwellers the developer to whom the LOI may be issued, could be directed to deposit certain amounts with SRA.. Earlier, there was some discussion about the quantum and the mode of deposit. However, now on affidavit it is pointed out that interest free security deposit of Rs.2.50 crore i.e. 50% of the cost of construction of 308 rehabilitation tenements proposed to be constructed in Phase-I,

will have to be furnished by the developer and only in that event SRA will consider taking further steps.

15. In para no.3 of the affidavit filed by SRA on 11th February 2005 this is what is stated:-

> "... ... The said security deposit of Rs.2.50 crores will remain deposited with this respondent till the entire construction activities of 308 rehabilitation tenements under Phase-I are completed by developer of Slum Rehabilitation Scheme. I say that after completion of 308 rehabilitation tenements under Phase-I by the developer of Slum Rehabilitation Scheme the said amount of Rs.2.50 crores shall be continued as security deposit for further 308 rehabilitation tenements proposed to be constructed under Phase.II. The Security Deposit of Rs.2.5 crores will be kept as guarantee for completion of each stage of construction of the total of 616 rehabilitation tenements under both Phase-I and Phase-II including on-site infrastructural works to be undertaken by the developer of the Slum Rehabilitation Scheme. This respondent shall be entitled to forfeit amounts proportionate to stage of the construction of rehab tenements in both Phase-I and Phase-II, from the Security Deposit of Rs.2.5 crores, upon failure of the developer of slum Rehabilitation Scheme to achieve progress as stipulated for each stage of construction to be approved by Slum Rehabilitation Authority while granting the LOI, or upon breach of any other conditions as may be laid down by Slum Rehabilitation Authority. The said security deposit of Rs.2.5 crores without interest will be returned to the developer only after grant of Occupation Certificate in respect of all Rehab Buildings."

16. We had also suggested that since the plot of land belongs to Municipal Corporation of Greater Bombay, it's Executive Engineers should be placed in charge of the project. That would enable periodical supervision and monitoring. However, SRA has pointed out to us that they have a Full Fledge Engineering Department with qualified Executive Engineers, Assistant Engineers, Sub Engineers on deputation from MCGB.. They have also pointed out that they will have no objection if a competent Civil Engineer from Municipal Corporation is appointed for technical supervision. They have further stated that they will grant occupation certificate to the buildings only after certification by said Engineer. We, therefore, direct Municipal Corporation of Greater Bombay and SRA to appoint a Civil Engineer after commencement certificate is granted for construction of rehabilitation buildings. Needless to add that in terms of the agreement between the SRA and Municipal Corporation, the Civil Engineer so appointed shall continue to supervise the construction activities till completion of the project. This step is in public interest as well. It will ensure that Municipal Corporation of Greater

Bombay get the area reserved for it in the form of Nursing Quarters and School.

17. The portion of land falling under reservation of play ground is presently kept out of development and that aspect would be considered by the SRA after further orders are passed by this Court in Writ Petition No.1152 of 2002.

18. In the affidavit filed on 11th February 2005 the SRA has further pointed out that the Slum Rehabilitation scheme proposal is at primary scrutiny stage and not yet approved. They have pointed out that eligibility of the members of Managing Committee of respondent no.6 shall be thoroughly scrutinized by the Slum Rehabilitation Authority before issuing LOI and in any case within eight weeks from the date of this affidavit. Mr.Singh appearing for 7th respondent makes a statement that the developer will file necessary undertaking as per para no.7 of the affidavit dated 11th February 2005 of SRA, within such time as is stipulated by it. He has also agreed to file an undertaking in terms of para 7 of this affidavit in this Court in case the Letter of Intent is issued in favour of

respondent no.7. He has also agreed to furnish indemnity as insisted by SRA..

19. In our view, all the aforesaid measures would ensure that interest of eligible slum dwellers/hutment dwellers are sufficiently protected. The aforesaid steps and measures are in addition to those already initiated and undertaken by SRA.. Further affidavit has been filed as per our directions. All apprehensions are, therefore, now taken care of. We are of the view that petitioners cannot make any grievance in view of the stand of SRA placed on affidavit. Now that the eligibility is going to be reconsidered, it will always be open for the petitioners to point out to the appropriate authorities that they are eligible for a tenement under the scheme. This is their only entitlement and right. Although, it is pointed out to us that the petitioners are not genuine slum dwellers but have been put up by a rival developer, in our view, in the light of the affidavit filed by the SRA, if the petitioners satisfy the authorities about their eligibility the competent authority as well as SRA would take necessary steps and ensure provision of tenement for them.

20. In the light of the aforesaid discussion, in our view, it is not necessary to either quash and set aside the scheme or issue further directions as sought in the petition. Needless to state that the scheme is presently at primary stage. Final approvals have not been granted on the own showing of SRA.. If SRA decides not to issue LOI in favour of respondent no.7, it will always be open for the parties to submit a fresh development scheme. For the present, we do not find that this is a fit case for interference with the tentative decision of the SRA..

21. Save and except the aforesaid directions, we decline to interfere. Petition stands dismissed.

22. There is a Chamber Summons filed by one Mr.Nazir Khan for Intervention. The same parties have filed another application for impleading them as party respondents. We decline to entertain these Chamber Summonses. In our view, if the applicants in these chamber summonses have any grievance, they will be free to approach the authorities and establish their claim. Leaving such remedies open for them, Chamber Summonses are dismissed.

(H.L.GOKHALE, J.)

(S.C.DHARMADHIKARI, J.)